

**Federal Defenders
OF NEW YORK, INC.**

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February 28, 2020

By ECF

Hon. Paul A. Crotty
Judge, United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

On the issue of conscious avoidance, the government claims that the jury could find that Mr. Schulte deliberately avoided confirming with Sean that his access privileges on the OSB libraries had been revoked. Govt. Ltr. at 4. This strained effort to justify a conscious avoidance charge fails.

The record evidence is clear: According to Jeremy Weber, Mr. Schulte, at Mr. Weber's suggestion, went to speak with Sean. Tr. at 290. Mr. Weber testified that he saw Mr. Schulte go to Sean's office, speak to Sean, and then return to Mr. Weber to say "that Sean had said that his [Schulte's] access should be returned, and that I [Weber] should go and do it." Tr. at 290.

This evidence shows, at most, that Mr. Schulte lied to Mr. Weber about what Sean had said. But, it does not support a theory of conscious avoidance. Had Mr. Schulte wished to remain deliberately ignorant, he would not have gone to speak with Sean at all, and certainly would not have returned to tell Mr. Weber that he (Mr. Schulte) had in fact spoken to Sean, and that access should be restored.

Evidence of being untruthful (according to the government) is not the same as evidence of deliberate ignorance of a fact. It is only the latter that would properly warrant a conscious avoidance charge.

Respectfully submitted,

/s/

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